

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

GENE HARTMAN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. <u>CIV-16-1147-F</u>
	)	
BIG LOTS STORES, INC.,	)	District Court of Oklahoma County
	)	State of Oklahoma, No. CJ-2016-4603
Defendant.	)	

**NOTICE OF REMOVAL**

28 U.S.C. § 1446(a)

TO: THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF OKLAHOMA:

1. Notice. Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendant, Big Lots Stores, Inc. (“Big Lots”), a foreign corporation, removes this action to the United States District Court for the Western District of Oklahoma, which is the judicial district in which the action is pending. In support of this Notice, Big Lots states as follows:

2. Attachment of State Court Papers. All state court papers served on Big Lots at the time of removal, are referenced on the docket sheet, attached as *Ex. “1.”*

3. The State Court Action. Plaintiff, Gene Hartman (“Plaintiff”), commenced this action against Big Lots on September 8, 2016, in the District Court of Oklahoma County, State of Oklahoma, Case No. CJ-2016-4603 (the “State Court Action”). (A copy of the Petition filed in Oklahoma County is included in the State Court Action papers attached hereto as *Ex. “2.”*) Big Lots was served a summons (*Ex. “3”*) through its

registered agent, Corporation Services Company, on September 12, 2016. (*See Ex. “4”* for the Notice of Service of Process received from Big Lots’ Registered Service Agent.)

4. Removal is Proper. Removal to this Court from the District Court of Oklahoma County, State of Oklahoma, is proper pursuant to 28 U.S.C. §§ 1441 and 1446, in that: (a) there is complete diversity of citizenship between Plaintiff and Big Lots; (b) the amount in controversy exceeds \$75,000; (c) this Notice of Removal is being filed less than thirty (30) days after Big Lots received a copy of a pleading which revealed that the State Court Action was removable (*e.g.* the Petition); and (d) this Notice of Removal is being filed less than one (1) year after commencement of the State Court Action.

**A. Diversity of Citizenship Exists.**

5. Plaintiff is a Citizen of Oklahoma: While Plaintiff did not plead anything regarding his citizenship, Plaintiff identified his address as follows in forms that were filled out immediately after the accident at issue: (1) 3317 SE 21<sup>st</sup>, Del City, Oklahoma 73115; and (2) 3317 SE 31<sup>st</sup>, Del City, Oklahoma 73115. Accordingly, upon information and belief, Plaintiff is a citizen of Oklahoma residing in Oklahoma County, State of Oklahoma.

6. Big Lots is Not a Citizen of Oklahoma: Big Lots is a foreign corporation organized and existing under the laws of Ohio, with its principal place of business in Columbus, Ohio. (*See Ex. “5,”* Information from the Ohio Secretary of State showing Big Lots’ address and status as a foreign corporation; *Ex. “6,”* Information from the Oklahoma Secretary of State showing Big Lots’ status as a foreign corporation.)

**B. The Amount in Controversy Exceeds \$75,000.**

7. Plaintiff's Allegations Indicate the Amount in Controversy Exceeds \$75,000.00. According to his Petition, Plaintiff seeks damages "in an amount in excess of the amount required for diversity jurisdiction." (*Ex. "2,"* Petition at p. 1.) Thus, Plaintiff's allegations establish that the damages Plaintiff seeks exceed \$75,000.00.

**C. The Removal is Timely, and the Procedure is Proper.**

8. Removal Within Thirty (30) Days of Receipt. This Notice of Removal is timely under 28 U.S.C. § 1446(b) because it is filed within thirty (30) days after Big Lots received a copy of Plaintiff's Petition, which is the first pleading in the State Court Action "from which it may first be ascertained that the case is one which is or has become removable." (*See Ex. "2,"* Petition).

9. Removal Within One (1) Year After Commencement of the State Court Action. This Notice of Removal is also timely under 28 U.S.C. § 1446(b) because it is filed within one (1) year after Plaintiff commenced this action against Big Lots. (*See id.*).

10. Notice of Filing. Written notice of the filing of this Notice of Removal will be given promptly to the Plaintiff, and a copy of the Notice of Removal will be filed with the Clerk of the District Court of Oklahoma County, State of Oklahoma, as provided by 28 U.S.C. § 1446(d).

11. Payment of Removal Fee. Big Lots' counsel will forward payment of the removal fee to the Clerk of this Court simultaneously with the filing of this Notice.

WHEREFORE, Defendant, Big Lots Stores, Inc., removes this action to this Court and invokes this Court's jurisdiction.

DATED this 3<sup>rd</sup> day of October, 2016.

s/ C. Eric Shephard

Greg A. Castro, OBA No. 11787

C. Eric Shephard, OBA No. 22299

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**Attorneys for Defendant**

**CERTIFICATE OF SERVICE**

I hereby certify that on October 3rd, 2016, a true and correct copy of the above and foregoing was served via regular mail, postage prepaid, to the following:

T. David Hasbrook, OBA No. 3961

Clayton T. Hasbrook, OBA No. 22169

HASBROOK & HASBROOK

400 N. Walker Avenue, Suite 130

Oklahoma City, OK 73102

**Attorneys for Plaintiff**

and further that a copy of said Notice of Removal was hand delivered to the Office of the Oklahoma County Court Clerk for filing in Case No. CJ-2016-4603.

s/ C. Eric Shephard

C. Eric Shephard

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